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UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,775	02/26/2001		10910/3	6334

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EXAMINER
DIXON, THOMAS A

ART UNIT	PAPER NUMBER
3639	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/763,775	TSUTSUI
	Examiner	Art Unit	
	Thomas A. Dixon	3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>22 August 2005</u>.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-39</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-39</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/23/01</u>.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments with respect to claims 1-39 have been considered but are moot in view of the new ground(s) of rejection.

Specification Objections

2.   The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

Claim Objections

3.   Claims 2-9, 11-14, 16, 18-30, 35-36 are objected to because of the following informalities: the phrases "characterized in that", and "characterized by comprising" are not followed by a colon so it is unclear where the preamble ends and the body of the claim begins.

       Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4.   Claims 1-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims and specification are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Appropriate correction is required.

5.   Claims 1-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

the term "grasped" in claim 1, "grasping section", "grasps" and "grasped" in claims 10-13 is unclear and appears to be idiomatic English.

Appropriate correction is required.

6.   Claims 17-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, it appears that they are to an invention independent of claim 1 from with they depend, because claim 17 begins with a communication unit without use of a radio communication network and the previous claims were to a radio portable terminal.

7.   Claims 20-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

specifically it appears that the payable amount section only exists when a license fee is not less than a predetermined amount.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8.   Claims 1-7, 22-25, 34-39 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Korpela (6,311,054), and further in view of Matsuyama (JP 2000-

123084).

As per Claim 1, 34, 37.
Korpela ('054) discloses a user information table for storing information regarding a user of each radio portable terminal, see column 1, line 43 – column 2, line 38 and figures 1-2;
a payment-status management table for managing the status of payment of a predetermined usage fee which each user stored in the user information table must pay for a predetermined period, see column 3, lines 19-45;
a detection section for detecting the status of usage of each application, see figures 1-4, and column 3, lines 8-45 and column 4, line 37- column 6, line 41;
a usage status management table for storing the detected usage status, see column 1, line 43 – column 2, line 38; and
a computation section, see column 5, line 56 – column 6, line 8.
Korpela ('054) does not specifically disclose calculating and outputting a license fee to be paid for each provider stored in the provider information, on the basis of a grand total of usage fees grasped by the payment-status management table and the usage status stored in the usage-status management table.
Matsuyama teaches a storage means for storing data which specify the information and data which indicate an amount to be paid to each of information providers for use of the information and calculation means for calculating the sum total of amounts to be paid to each of the information providers based on the data stored in the storage means, see page 5 (0005) of translation, for the benefit of properly compensating the owners of the intellectual property.
Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to calculate a grand total of usage fees based on stored data as taught by Matsuyama for the benefit of properly compensating the owners of the intellectual property.

As per Claim 2, 35, 38.
Korpela ('054) further discloses:

the detection unit detects the application usage on an application-by-application basis, and the usage-status management table stores the application usage status on an application-by-application basis, see table column 4;

Korpela ('054) does not specifically disclose:

the computation section comprises:

an allotting section for allotting a portion of the grand total of usage fees grasped by the payment-status management table, as a grand total of license fees to be paid to providers; and

a distribution section for distributing and outputting, from the allotted grand total of license fees, a license fee to be paid for the provider of each application, in accordance with the usage status stored in the usage-status management table.

Matsuyama teaches a storage means for storing data which specify the information and data which indicate an amount to be paid to each of information providers for use of the information and calculation means for calculating the sum total of amounts to be paid to each of the information providers based on the data stored in the storage means, see page 5 (0005) of translation, for the benefit of properly compensating the owners of the intellectual property.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to allot and distribute a grand total of usage fees based on stored data as taught by Matsuyama for the benefit of properly compensating the owners of the intellectual property.

As per Claim 3, 36, 39.

Korpela ('054) further discloses:

the detection unit detects the application usage on an application-by-application basis, and the usage-status management table stores the application usage status on an application-by-application basis, see table column 4;

Korpela ('054) does not specifically disclose:

the computation section comprises:

an allotting section for allotting a portion of the usage fees as a license fee to be paid to providers of the applications; and

a distribution section for distributing and outputting, from the allotted license fee, a license fee that each user must pay for each provider, in accordance with the usage status stored in the usage-status management table;

a calculation section for summing provider by provider the license fees distributed and output with respect to all the users in order to obtain a license fee to be paid to each provider.

Matsuyama teaches a storage means for storing data which specify the information and data which indicate an amount to be paid to each of information providers for use of the information and calculation means for calculating the sum total of amounts to be paid to each of the information providers based on the data stored in the storage means, see page 5 (0005) of translation, for the benefit of properly compensating the owners of the intellectual property.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to allot and distribute a grand total of usage fees based on stored data as taught by Matsuyama for the benefit of properly compensating the owners of the intellectual property.

As per Claim 4.
Korpela ('054) further discloses:
the detection section counts a download count of the application in a predetermined period, and the usage-status management table stores the counted download count as a usage-status, see column 5, line 56 – column 6, line 8.
Korpela ('054) does not specifically disclose:
the computation section calculates a license fee on the basis of the download count stored in the usage status management table.
Matsuyama teaches a storage means for storing data which specify the information and data which indicate an amount to be paid to each of information providers for use of the information and calculation means for calculating amounts to be paid to each of the information providers based on the data stored in the storage means, see page 5 (0005) of translation, for the benefit of properly compensating the owners of the intellectual property.
Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to compute usage fees based on stored data as taught by Matsuyama for the benefit of properly compensating the owners of the intellectual property.

As per Claim 5.
Korpela ('054) further discloses:
the detection section detects an execution time of the application on the radio portable terminal and the usage-status management table stores the detected execution time as a usage status, see table column 4.
Korpela ('054) does not specifically disclose:
the computation section calculates a license fee on the basis of the execution time stored in the usage-status management table.
Matsuyama teaches a storage means for storing data which specify the information and data which indicate an amount to be paid to each of information providers for use of the information and calculation means for calculating amounts to be paid to each of the information providers based on the data stored in the storage means, see page 5 (0005) of translation, for the benefit of properly compensating the owners of the intellectual property.
Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to compute usage fees based on stored data as taught by Matsuyama for the benefit of properly compensating the owners of the intellectual property.

As per Claim 6.

Korpela ('054) further discloses the detection section regards as the execution time a time difference between a time or receipt from the radio portable terminal of a notification indicating start of the application and a time of receipt from the radio portable terminal of a notification indicating end of the application, see table column 4, (tot cum, total cumulative).

As per Claim 7.

Korpela ('054) further discloses:

the detection detects an activation count of the application on the radio portable terminal, and the usage-status management table stores the detected activation count as a usage status, see column 5, line 56 – column 6, line 8;

Korpela ('054) does not specifically disclose:

the computation section calculates a license fee on the basis of the activation count stored in the usage-status management table.

Matsuyama teaches a storage means for storing data which specify the information and data which indicate an amount to be paid to each of information providers for use of the information and calculation means for calculating the amounts to be paid to each of the information providers based on the data stored in the storage means, see page 5 (0005) of translation, for the benefit of properly compensating the owners of the intellectual property.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to compute usage fees based on stored data as taught by Matsuyama for the benefit of properly compensating the owners of the intellectual property.

As per Claim 22.

Korpela ('054) further discloses the payment status of each user is stored in the payment-status management table, see column 3, lines 19-45.

As per Claim 23.

Korpela ('054) further discloses the total usage fees by each user is stored in the payment-status management table, see column 3, lines 19-45.

As per Claim 24.

Korpela ('054) further discloses the usage fee is constant among all users, see column 5, lines 63-66.

As per Claim 25.

Korpela ('054) further discloses the usage fee is constant among within each of user groups into which users are categorized, see column 5, line 63 – column 6, line 19.

9.   Claims 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Korpela (6,311,054), and further in view of Matsuyama (JP 2000-123084) further in view

of Sako et al (JP 2000-115163).

    As per Claim 8.
    Korpela ('054) does not specifically disclose:
    the detection section counts point number with which the user voted for the
application, and the usage-status management table stores the counted point number
as a usage status; and
    the computation section calculates the license fee based on the point number
stored in the usage-status management table
    Sako et al teach using a judgment of a user on a charging amount, see abstract.
    Matsuyama teaches a storage means for storing data which specify the
information and data which indicate an amount to be paid to each of information
providers for use of the information and calculation means for calculating amounts to be
paid to each of the information providers based on the data stored in the storage
means, see page 5 (0005) of translation, for the benefit of properly compensating the
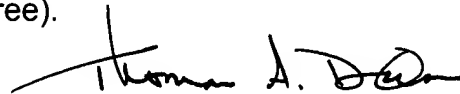owners of the intellectual property.
    Therefore, it would have been obvious to one of ordinary skill in the art, at the
time the invention was made to compute usage fees based on user judgment as taught
by Sako et al and stored data as taught by Matsuyama for the benefit of properly
compensating the owners of the intellectual property.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (571) 272-6803. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas A. Dixon
Primary Examiner
Art Unit 3639

November 05